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EX PARTE OR LATE FILED

August 15, 1994

The Honorable Susan P. Ness
Federal Communications Commission
1919 'M' Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

RE: Unlawful Return of Pending SMR Applications/ Doc. 93-252

Dear Commissioner Ness:

HGTV, Inc. and SGTV, Inc. are currently SMR licensees and have numerous SMR applications pending, which the Commission is apparently considering returning, according to Public Notice 2638 of August 9th and the comments of FCC personnel. HGTV and SGTV are small businesses, whose owners have been cellular system owners and possess the assets to offer competitive SMR/ESMR services¹; SGTV is minority owned; both entities have invested a small fortune and nearly two years of work, research, etc., to select various smaller SMR markets that then seemed of little interest to Nextel, and to prepare applications and file them. HGTV and SGTV simply cannot understand how the Commission could possibly return pending applications, applications that were prepared and filed nearly a year ago in good faith and in total compliance with all Commission rules.

Apparently, the draconian return of pending SMR applications is motivated by the Commission's desire (1) to auction the remaining, small markets and (2) to facilitate wide-area licensing on an MTA basis. Neither reason is valid.

¹ The owners of HGTV and SGTV were the majority owners of a cellular system, which they built and operated for roughly three years, in Columbia, Missouri. Their non-wireline system literally took 75% of the subscribers away from the wireline system, despite the latter's several year head start. Then, when the RSA systems became operational, their signals came way into Columbia, removing about 50% of the system's roaming revenue (on the Interstate that connected St. Louis and K.C.), which made the Columbia non-wireline financially unviable. Pleadings were filed at the FCC, but no relief was forthcoming, and for unexplained reasons, the FCC would not grant any relief to the tiny Columbia non-wireline; so, the system was sold under duress for a low price to Ameritech, the owner of the RSA's that were blanketing Columbia with their signals. The owners of HGTV and SGTV have shown their bona fides, by moving from their lifelong homes in Southern New Jersey to Columbia to go into the cellular business in Columbia, MO., where they still live nearly two years after selling their cellular business. Now, they seek to put their hard earned assets in SMR/ESMR.

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As to auctions, the remaining SMR spectrum should not be auctioned for the following reasons: (1) there has not been adequate notice; (2) the losses to hundreds of small business and minority businesses will be vast and virtually impossible to calculate; (3) the authority for auctions was premised upon fair treatment of small businesses and minorities; (4) Nextel has no competition in SMR in the US today, and the small-business applicants offer the only remaining chance for competition, and the return of pending applications will destroy that competition; (5) only the crumbs are left, i.e., the smallest markets; 800 MHz SMR, unlike 900 MHz, is a mature, almost fully-licensed business; it is pointless to try to turn the clock back and re-license now; (6) there is a strong chance that any return of applications would be reversed by the courts.

As to wide-area licensing on an MTA basis, pending applications are basically irrelevant. The amount of spectrum involved is negligible and pending applicants (and their eventual licenses) can be treated in exactly the same manner that the Commission proposes to treat existing licensees and operating systems.

In sum, the potential gains to the FCC are far from adequate to offset the enormous and incalculable losses to pending applicants — and to the public that would benefit from the SMR competition that Nextel would face, at least in the smaller markets. HGTV and SGTv invite the reader to look again at footnote one hereof, which demonstrates that their owners have proven their abilities to compete with big companies (like TDS) and win very big. Please give us a chance; we didn't let you down in Columbia and we won't in SMR. Please process our long pending SMR applications now.

Very truly yours,

HGTV, Inc. & SGTv, Inc.

By 
 Harry A. Gilbert
 President of HGTV
 Attorney-in-Fact of SGTv, Inc.